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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,603

09/11/2006

Dominique Lampe

KOB

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EXAMINER

RAMSEY, JEREMY C

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

05/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,603	<b>Applicant(s)</b> LAMPE, DOMINIQUE	
	<b>Examiner</b> JEREMY C. RAMSEY	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendment***

The following office action is in response to the amendment filed on 02/10/2009. Claims 1, 3-6 and 8-17 are pending in the application. Claims 1, 3-6 and 8-17 are rejected as set forth below.

***Specification***

The previous objections to the specification have been withdrawn.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-6 and 8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanright 5,988,254 in view of White 2,689,349.

3. In re claims 6-9, 11-14, 16 and 17, with reference to Figures 1 and 3, Hoyt '989 discloses a folding curtain (21) comprising:

- At least one tunnel (elongated pockets, column 3, lines 51-52) extending across the width of the curtain (1).
- A strengthening rod (3) inserted in the tunnel.

Hanright '254 fails to disclose:

- The strengthening rod comprising at one extremity a number of pointed projections and that the tunnel is closed off by pricking the projections through the wall of the tunnel.

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- The projections are movable against a spring force in the longitudinal direction.
- The projections are part of a terminal element provided on the strengthening rod.
- The terminal element comprises a sleeve shaped jacket containing a coiled spring and an element provided with the pointed projections, and the element is movable against the spring force of the coiled spring.

With reference to Figures 2 and 3, White '349 discloses:

- Pointed projections (19) and that pricking the projections through the wall of the material.
- The projections (19) are movable against a spring (8) force.

points 19 extending downwardly and toward the fabric or collar wing 21. By then releasing the pressure on the loop portions 16, the spring 8 will draw the eyes 11 toward one another and in so doing will displace the loops 12 and points 19 away from one another so that the points 18 will pierce the fabric to thereby stretch and stiffen the fabric or collar wing portions disposed between said points. The loop portions 16 perform a secondary function in that said portions 40 constitute stops which engage the fabric to limit the extent of penetration of the spike portions 17. Obviously, the amount of tension applied to the fabric may be varied by varying the extent that the spike points 18 are displaced toward 45 one another before being applied to the fabric.

- The projections are part of a terminal (12)(10)(8) element provided on the rod.
- The terminal element comprises a sleeve shaped jacket (10) containing a coiled spring (8) and an element provided with the pointed projections (19), and the element is movable against the spring force of the coiled spring.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the terminal element with pointed projections movable against a

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spring force as taught by White '349 in order to provide a means to retain the strengthening rod in a stretched condition against the fabric. (column 1, lines 1-13)

4. In re claims 1-5 and 15, the folding curtain of Hanright '254 has been discussed above and obviously discloses a method for closing of at least one tunnel extending across the width of a curtain including a strengthening rod with a number of pointed projections movable against a spring force, wherein the projections are parts of a terminal element that includes a sleeve) on the extremity of the strengthening rod.

5. In re claim 8, the folding curtain of Hoyt '989 has been discussed above but fails to disclose:

- Wherein the projections are made of synthetic material.

6. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the projections could be made of synthetic material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. By using synthetic materials, it would help maintain a light weight but retain the necessary structural properties. Further, synthetic materials are widely available and used, and can be selected for strength, stiffness, flexibility, durability, or whatever properties are needed in a particular application.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-14 have been fully considered but not persuasive.

In response to applicant's argument the piecing points of White are not part of a strengthening rod, the examiner respectfully disagrees. White discloses a stiffening and stretching device. It can be assumed that the stiffening aspect of the device further includes a strengthening effect as well. The applicant argues that the examiner does not give an explanation as to how the features of White could be incorporated into Hanright, however, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). White clearly teaches the use of a projection movable against a spring force that pricks through the wall of a material in order to secure a stiffening/strengthening member.

In response to the applicant's argument that the examiner has not argued that the reference teaches the projection is movable against a spring for in the longitudinal direction of the rod, it can be seen from the figures that of White that it is inherent that the spring moves in the longitudinal (lengthwise) direction of the rod to which it is applied. When combined with Hanright, it is obvious that it would operate in the lengthwise direction of the rod.

In response to the applicant's argument that White does not teach a terminal element the examiner respectfully disagrees. The features taught by White are on an end of the stiffening device and therefore are terminal.

In response to the applicant's argument that White does not teach a sleeve shaped jacket, there is no antecedent description as to what defines "sleeve shaped". Element 10 encircles the

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member (11) and contains the coil spring and pointed projections.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Both devices teach stiffening/strengthening members. The device of White teaches a manner in which to attach such a member, and this means for attaching would be relevant to the device of Hanright.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEREMY C. RAMSEY whose telephone number is (571)270-3133. The examiner can normally be reached on Monday-Friday 6:30 am-4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M Purol/  
Primary Examiner, Art Unit 3634

/Jeremy C Ramsey/  
Examiner, Art Unit 3634